

FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CCO - 176623

PRELIMINARY RECITALS

Pursuant to a petition filed on September 7, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the [REDACTED] County Department of Human Services regarding Child Care (CC), a hearing was held on October 11, 2016, by telephone. The case was held open 14 days post-hearing for the parties to submit additional evidence. Both parties submitted additional evidence and the record was closed on October 25, 2016.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$14,993.90 for the period of February 6, 2011 – December 31, 2013 due to client error in failure to accurately report household income, change in work hours and household composition.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 53703

By: [REDACTED]
[REDACTED] County Department of Human Services
1717 Taylor Ave
[REDACTED] WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED] County. [REDACTED] is the reported father of Petitioner's two children.
2. On August 14, 2009, the Petitioner signed a lease for an apartment on [REDACTED]. The lease lists the Petitioner and her two children as tenants. The lease was for a period of August 15, 2009 – August 31, 2010. A rider was attached to the lease related to Petitioner's participation in the Affordable Income Housing Tax Credit Program. Pursuant to that rider, the Petitioner agreed that participation in the program required the household to meet certain income limitations based on the number of persons residing on the premises. She agreed to notify the landlord immediately of any changes in persons residing on the premises.
3. On May 19, 2010, the Petitioner signed another lease for [REDACTED] for the period of September 1, 2010 – August 31, 2011. Petitioner and her two children were listed as tenants. The Affordable Income Housing Tax Credit rider was attached. On June 3, 2011, the Petitioner signed another lease for [REDACTED] for the period of September 1, 2011 – August 31, 2012. The Affordable Income Housing Tax Credit rider was attached.
4. On July 8, 2010, [REDACTED] applied for FS benefits. He listed his residence on [REDACTED]. This is reported to be his mother's address. He reported a household size of one. He reported unearned income from unemployment compensation of \$1,087.90/month. He reported child support obligations.
5. On or about December 1, 2010, the Petitioner submitted a Six Month Report Form (SMRF) to the agency. She reported her address on [REDACTED]. She reported a household size of three including herself and two children. She reported her employment with [REDACTED] and child support income of \$134/month.
6. On June 20, 2011, [REDACTED] submitted a renewal application for FS benefits. He reported his residence on [REDACTED]. He reported the Petitioner's address on [REDACTED] as his mailing address. He reported a household size of one. He reported employment with [REDACTED] starting January 24, 2011, 40 hours/week at \$12/hour. He reported child support obligations.
7. In August, 2011, the Petitioner obtained a mortgage and purchased a home on [REDACTED]. She executed a Warranty Deed for the property on August 19, 2011.
8. On September 12, 2011, the Petitioner submitted a change report to the agency. She reported her new address on [REDACTED]. No changes in household composition or income were reported.
9. On January 30, 2012, the Petitioner submitted a renewal application to the agency. She reported her address on [REDACTED]. She reported no change in household composition. She reported that she works at [REDACTED] 40 hours/week at \$16.50/hour. She reported child support of \$212.07/month for each child.
10. On April 10, 2012, [REDACTED] signed his 2011 1040 tax forms listing his address on [REDACTED]. This is reported to be his mother's address.
11. On July 31, 2012, the Petitioner submitted a renewal application. She reported her address on [REDACTED]. She reported no changes in household composition or earned income. She reported child support income of \$188.77/month for each child. The Petitioner reported [REDACTED] as the absent parent of both children. She reported a date of absence of October 1, 1999 and reported that she and [REDACTED] were never married.
12. In August, 2012, [REDACTED] received a letter from the IRS address to him at the [REDACTED] address.

13. On January 3, 2013, the Petitioner submitted a SMRF. She reported her address on [REDACTED]. She reported no changes in household income or child support income. She reported her employment at [REDACTED]. She reported a rate of pay of \$16.50/hour. In the section that asked for "Hours Worked Per Pay Period", the Petitioner blacked out the pre-filled number and wrote "incorrect". She reported child support income of \$138.77/month for each child.
14. On July 8, 2013, the Petitioner submitted a renewal application. She reported her address on [REDACTED]. She reported no change in household composition. She reported employment at [REDACTED], 80 hours/pay period at \$16.50/hour. She reported child support income of \$190.31/month for one child and \$190.32/month for the other child. She reported [REDACTED] as the absent parent of both children. She reported a date of absence of October 1, 1999 and noted that "paternity not established".
15. The agency obtained unemployment insurance benefits detail for [REDACTED]. He reported Petitioner's address on [REDACTED] from August, 2013 – January, 2014.
16. The agency obtained law enforcement records from [REDACTED] Police Department records, [REDACTED] Police Department, [REDACTED] Police Department and [REDACTED] Police Department from 2010 and 2011 showing [REDACTED] reported Petitioner's address on [REDACTED] as his address. and from 2012 and 2013 showing [REDACTED] reported Petitioner's address on [REDACTED] as his address.
17. The agency obtained Wisconsin Circuit Court records for [REDACTED] who reported Petitioner's address on [REDACTED] as his address in 2012.
18. The agency obtained employment records for [REDACTED] from [REDACTED]. In 2011, [REDACTED] completed his employee withholding form and 401(k) forms reporting Petitioner's address on [REDACTED] as his address. In 2012, [REDACTED] completed a direct deposit set-up form and employee non-disclosure agreement reporting Petitioner's address on [REDACTED] as his address. In 2013, [REDACTED] completed a W-4 form and employee separation report listing Petitioner's address on [REDACTED] as his address.
19. In 2007, the Petitioner and [REDACTED] signed an agreement whereby the Petitioner allowed [REDACTED] to use her 2003 [REDACTED] with conditions.
20. In the spring of 2014, the Petitioner and [REDACTED] were living together. On April 22, 2014, the Petitioner and [REDACTED] signed an Attachment which was incorporated into a Stipulation and Order to Amend Judgment in a paternity case involving [REDACTED] paternity of Petitioner's two children. The Attachment amends the Order by allowing for the suspension of child support payments due to the Petitioner and [REDACTED] residing together. Petitioner reported the living arrangement to the agency.
21. In November, 2015, Petitioner and [REDACTED] were engaged. In February, 2016, they were married.
22. On September 2, 2016 and September 6, 2016, the agency issued Child Care Client Overpayment Notices and worksheets to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$14,993.60 for the period of February 6, 2011 – December 31, 2013 due to a client error in failing to accurately report household income, changes in work hours and household composition.
23. On September 7, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or

49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. § 49.155, and thus they are within the parameters of § 49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it is proper given the facts of the case. If the agency meets its burden, the Petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat. § 49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1. If both parents are in the household, both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1).

In this case, the agency asserts that its evidence demonstrates that ■ was living in the home with the Petitioner from 2008 – 2014 and Petitioner did not report that he was part of the household. The agency asserts that there was an overpayment of child care benefits because, if ■ had been included in the household, his income and the household composition would have changed Petitioner's eligibility. The documentary evidence submitted by the agency to demonstrate that ■ resided with the Petitioner include employment records and tax records (Finding of Fact #18), law enforcement records and court records (Findings of Fact #16 and 17), public assistance benefit records (Finding of Fact #15). The agency submitted testimony of the agency investigator regarding his investigation and police officers from the ■ Police Department regarding law enforcement contacts and records.

The Petitioner does not dispute that ■ used her address in the documents presented by the county agency. She asserts that ■ was using her address as a mailing address but that he did not live with her until 2014. She argues that the evidence produced by the county agency does not prove that he was living with her.

The Petitioner testified that she and ■ had an "on again/off again" relationship. She stated that ■ was very irresponsible, homeless and in and out of jail from the period of 2008 – 2013. He stayed with his mother, his sister, friends and the Petitioner on an inconsistent basis. Because he was transient, he used her address and his mother's address as his mailing address. Petitioner produced a number of documents including leases, mortgage and warranty deed, tax returns, public assistance documents, an affidavit from a former neighbor and child support records to support her assertion that they did not live together during the overpayment period. She noted inconsistencies in the addresses reported in the agency's evidence.

Both parties produced evidence outside of the relevant overpayment period. The Petitioner asserts that she produced documents from 2008 – 2010 to support her argument that ■ was irresponsible, resulting in her not wanting him to reside with her. Because the agency may only recover for up to six years prior to the discovery of an overpayment and because the agency assessed an overpayment beginning February, 2011, I do not find the documents of either party relating to the period prior to that time to be relevant to determining whether there was an overpayment.

Based on the totality of the evidence presented by both parties, I conclude there is insufficient evidence to prove that ■ resided with the Petitioner during the overpayment period. ■ clearly reported the Petitioner's address as his address to a number of entities including his employer, public assistance agencies, the child support agency and law enforcement agencies. The Petitioner does not dispute this. However, the Petitioner was able to present additional documents showing that he also reported his mother's address to various entities. In addition, the Petitioner was able to successfully rebut a number of pieces of the agency's evidence.

Both parties submitted hearsay evidence that was either not corroborated or not reliable. The Petitioner's affidavit from a former neighbor was admissible hearsay but not particularly reliable. The agency's argument that ■'s use of FS benefits at a store near the Petitioner's residence was hearsay that was not corroborated by any documentation. I also found that it was not reliable to show where ■ lived. In addition, the agency's argument was successfully rebutted by the Petitioner's documentation which showed that she attended classes at night and her testimony that ■ watched the children at night while she was at class, often going to get food at the nearby store. The agency also argued that ■ obtained a parking permit for the Petitioner's residence. Again, there was no documentation to corroborate the hearsay evidence of a permit though the Petitioner did not dispute it. The Petitioner successfully rebutted the permit issue by presenting the evidence of her night classes and testimony that ■ was watching the children.

The Petitioner submitted an affidavit from a former neighbor who stated that ■ did not live with the Petitioner. While this is hearsay, it is admissible hearsay. It is not, however, particularly reliable evidence and I did not find it useful in this analysis.

Overall, I found the Petitioner's assertions to be credible and found that her evidence was sufficient to rebut the agency's argument that ■ lived with her. The Petitioner did not dispute that ■ stayed with her occasionally. However, she submitted evidence that she reported to the agency and to the family court when they did start to live together in 2014. I conclude the agency did not meet its overall burden of proving that ■ lived with the Petitioner during the period of February 6, 2011 – December 31, 2013. Therefore, this matter is remanded to the agency to rescind its overpayment claims during that period against the Petitioner.

CONCLUSIONS OF LAW

The agency did not meet its burden of proving that ■ lived with the Petitioner during the period of February 6, 2011 – December 31, 2013.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to rescind the following claims against the Petitioner and to cease all collection actions related to the following claims: Claim #■■■■■■■■■■, #■■■■■■■■■■ and #■■■■■■■■■■. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

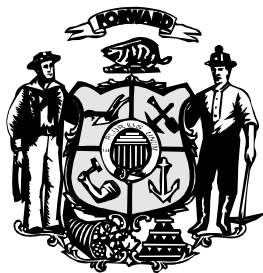
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of January, 2017

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 3, 2017.

Racine County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud